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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 19 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition of the People of the State of
California and the Public Utilities
Commission of the State of California to
Retain State Regulatory Authority over
Intrastate Cellular Service Rates

PR Docket No. 94-105

REPLY COMMENTS OF THE LOS ANGELES CELLULAR TELEPHONE COMPANY
("L.A. CELLULAR") RE PETITION BY THE CALIFORNIA
PUBLIC UTILITIES COMMISSION ("CPUC") TO RETAIN STATE
REGULATORY AUTHORITY OVER INTRASTATE CELLULAR SERVICE RATES

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October 19, 1994

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I.

INTRODUCTION

Pursuant to the Order of this Commission released on September 26, 1994, L.A. Cellular files its Reply Comments. These Comments are particularly addressed to the filing by the CPUC on September 13, 1994 ("Supplemental Filing").¹ The Supplemental Filing proves, as nothing else could, the wisdom of requiring this Commission to confine itself to information that is freely available to all participants.

¹ The Supplemental Filing contains statistics, charts, and calculations which were redacted from the service copies of State's initial Petition. L.A. Cellular and others had strongly objected to the CPUC's attempt to rely on information that was not generally available to other interested parties. The CPUC has evidently concluded that much of the information assumed by it to be confidential can in fact be derived from publicly available documents.

Incomplete though it is, the filing reveals that the CPUC has been repeatedly guilty of taking at face value factual allegations made by parties which are either far from the cellular scene, or motivated to distort the truth. When checked against publicly available data, these allegations are easily disproved. The necessary implication is that other factual assumptions, if they could be checked, would prove equally flawed. See Section II below.

Section III of this Reply will deal with changes in the California cellular market in the month which has followed the filing of Initial Comments. These changes show a continually widening gap between the "basic rates" on which California bases its case, and the actual rates which are currently being charged in major California markets. Unfortunately, recent developments also point to a retrenchment by the CPUC which could have the effect of chilling this evolution toward full price competition.

Finally, Section IV of the L.A. Cellular Reply will address certain of the arguments advanced by the County of Los Angeles with regard to cellular system design.

II.

CALIFORNIA'S SUPPLEMENTAL FILING REVEALS THE INACCURACY OF THE CPUC'S FACTUAL ASSUMPTIONS

The Supplemental Filing of September 13 is far from thorough. Many of the charts and calculations submitted to the FCC continue to be unavailable to interested parties. Insofar as California has shown its hand, however, numerous errors have been revealed. Thus:

A. The Relationship Between Costs and Prices:

At the heart of California's argument is the allegation that cellular investments on a per-subscriber basis have declined since 1989, that cellular operating costs have similarly declined, but that cellular rates have remained unchanged. For example, the CPUC argues at page 49 that fixed costs per subscriber amount to \$10.00 per person per month, that variable costs amount to an additional \$10.00 per month, but that the lowest customer bill for an "average" subscriber using 120 minutes per month is "about \$95". Based on these estimates, the CPUC concludes that cellular carriers in Los Angeles and San Francisco enjoy \$75 in operating profit for each new customer. A similar argument is made at page 35, where it is stated that both operating and capital costs have declined in the cellular industry, but that "this decline in costs has not been accompanied by a commensurate decline in rates".

The CPUC's source for its cost allegations is the Congressional Budget Office. Another source is Appendix H, which is supposedly drawn from the public filings of the relevant carriers. However, when these public filings are actually examined, one uncovers data which in no way resembles that assumed by the CPUC. Attachment 1 hereto demonstrates investment, operating costs, and per-subscriber revenue figures which may be derived from public filings by L.A. Cellular with the CPUC. What these figures reveal is that while total investment (excluding investment in spectrum) per-subscriber and operating costs have declined, they are still far higher than claimed by the CPUC. Moreover, revenues per subscriber have fallen more rapidly than investment and operating costs. Thus, average operating profits per subscriber unit

before taxes, interest, depreciation, amortization, and spectrum costs were approximately \$35 for L.A. Cellular in 1993, in sharp contrast to the \$75 alleged by the CPUC.

There are multiple origins for the CPUC's error, which goes to the heart of its case. Thus:

- Though tariffs, Annual Reports, and discovery responses are readily available to the CPUC, the CPUC chose not to check the Congressional Budget Office assumptions against the actual experience of California carriers. It is simply not true that operating costs are as low as \$10/month/subscriber, much less that operating profits approach \$75 per subscriber.
- The CPUC also accepted at face value the allegation that the "lowest monthly customer bill" for an "average" subscriber using 120 minutes is \$95. Such a figure results from the CPUC's application of retail "basic" rates to the CPUC's usage assumption. See below at Figure 2. The fact is that most retail subscribers have long since migrated to lower cost alternatives, that other units are served under wholesale tariffs, and the real average revenue per subscriber unit for L.A. Cellular was only \$85.46 per month in 1993.² Moreover, since the average subscriber actually consumed 137 minutes per month of airtime, the subscriber

² Average monthly revenues per unit for L.A. Cellular continued to fall in 1994, reaching \$76.70 in September.

actually paid 22% less and received 14% more in service than assumed by the CPUC.

The fact is that the CPUC was partly right about some of the elements in the equation. Capital investment and operating costs per subscriber have tended to decline (naturally enough) as systems have been filled. But these decreases are nowhere near the level assumed by California. Moreover, the bottom line, at least in Los Angeles, is the direct opposite of that claimed by the CPUC: while investment per subscriber has fallen by 32% since 1989, and operating costs by 12%, revenues per subscriber have fallen by 37%, and pre-tax profits by 60%.

B. The "Best Available" Rates for Los Angeles Users:

Stripped of ornamentation, the CPUC's argument is that the so-called "basic" rates put in effect by cellular carriers in the mid to late 1980's have not been reduced notwithstanding lower costs of service, and that this fact demonstrates a lack of full competition. The carriers' argument, also reduced to its essentials, is that the persistence of the so-called "basic rate" is due to the quirks of California's regulatory scheme, that alternative rate plans and promotions now command the loyalty of a great majority of subscribers, and that these alternatives have brought substantially lower rates to the end user.

The CPUC's initial Petition grudgingly acknowledges the carriers' argument ("discount plans offer modest rate relief to some consumers").³ But the CPUC quickly buries its concession in calculations and statistics which until September 13 were not

³ See CPUC Petition at page 43.

revealed. Based on these, the CPUC states that it was "unable to determine whether rates statewide went down as a result of the increased use of discount plans", and finds that "discount rates for low-volume users are not lower than basic rates". (Petition at p. 3). According to the CPUC, other users receive only modest reductions ("high-volume users...are receiving by far the greatest discounts, 18% over basic rates"). Id. These Comments are followed by the following chart (at page 44 of the Petition) which purports to show the "best rates" available to customers of L.A. Cellular:

Figure 1

Los Angeles Cellular Telephone Company - Best Rates
(Per CPUC)

Minutes of Use	60	120	480
1989	1.16	0.79	0.51
1993	1.16	0.71	0.42

When revealed on September 13, the contents of the above chart proved to be utterly inaccurate. California's calculation of the best L.A. Cellular rates for low volume users are, in fact, reflective of "basic" rates which are today charged to only a small minority of customers. At the time the CPUC filed its Petition, the following better alternatives were available to L.A. Cellular customers using 60 minutes a month:

- A corporate employee or member of an affinity group on month-to-month service would pay \$57/month or \$.95 per minute.

- A corporate employee or association member on a one-year contract would pay \$49.80/month, or \$.83 per minute for service to an analog unit. The rate would be \$42.60/month or \$.71 per minute for digital units.
- An individual end user with an analog unit on a service contract would pay \$70.20/month or \$1.17 per minute for 60 minutes of use, and would be entitled to an additional 20 free minutes of use. If he/she used the entire message allowance, the per minute cost would drop to \$.87.
- The individual end user with a digital unit on contract would pay \$63/month, or \$1.05/minute, with the per minute charge dropping to \$.79 if the rest of his/her message allowance is used.⁴

Then there is the so-called "high volume" user. According to the CPUC's unredacted chart, this subscriber is now paying \$.42 per minute, for an alleged 18% discount off the \$1.16 per minute assumedly paid by the "low" users.⁵ In fact, the high volume user described by the CPUC would, under L.A. Cellular's Dual Mode High

⁴ L.A. Cellular's statistics assume, along with those of the CPUC, that 80% of usage is at peak rates, though average off-peak usage has increased in recent months. Indeed, many customers -- particularly low volume users -- place most of their calls during off-peak hours. The rates for such users would be considerably lower than those described herein.

Note also that, as in L.A. Cellular's Initial Comments, "per minute" rates are blended, i.e., they include monthly access plus usage charges (assuming an 80% peak calling factor) and divide the resulting total by the number of airtime minutes.

⁵ The mathematics of the CPUC's calculation escape L.A. Cellular. Even if the CPUC chart were correct, the discount for the high volume user would be 63.8%.

Value Service Plan pay 38 cents per minute, and under the Company's program for large accounts would pay 35 cents per minute. These figures represent, respectively a 67.2% and 69.8% discount off the "best rate" of \$1.16/minute allegedly charged to the low volume user.

The CPUC's version of the "best rates" available to L.A. Cellular users has been reproduced above. The actual best rates available as of 1989 and when the CPUC filed its Petition were as follows:

Figure 2

Los Angeles Cellular Telephone Company - Best Rates
(CPUC Allegations in Parentheses)

Minutes of Use	60	120	480
1989	.95 (1.16)	.66 (.79)	.44 (.51)
1994	.71 (1.16)	.60 (.71)	.35 (.42)

Two facts are glaringly apparent. One is that the CPUC, despite its access to volumes of publicly available data (and confidential materials), has been lamentably inaccurate in the rate and cost calculations on which it has based its case. This inaccuracy became obvious when the CPUC made its supplemental filing on September 13.

Also apparent is that the CPUC's errors go far beyond those dissected above. L.A. Cellular has found similar mistakes in nearly all areas where the September 15 filing has given it access to the CPUC interpretations of L.A. Cellular tariffs, Annual

Reports, and discovery responses. For example, Appendix J to the Petition -- now unredacted -- purports to depict "Rate Plan and Customer Data" for various carriers, including L.A. Cellular. In addition to the mathematical errors which have been partly described above, L.A. Cellular would call the FCC's attention to a fundamental methodological flaw. Each of a small selection of L.A. Cellular rate plans has been applied by the CPUC to users of 60, 120 and 480 minutes per minute even where the plan on its face is designed for only one (or indeed none) of these usage levels. For example, the Company's "Nite Owl" plan is applied by the CPUC to users with heavy peak hour calling needs, and negligible off peak needs, with the result that the 60 minute customer is alleged to pay 1.177 cents per minute, and the user of 480 minutes, 81.2 cents per minute. Had the calculation been applied to off peak users - who are the only ones that would ever consider a Nite Owl Plan -- the actual per minute charge would be 61.6 cents for the low volume user, and 25.2 cents for the user of 480 off-peak minutes per month. In a similar way, the CPUC claims (Appendix J at page 2) that a low volume user would pay \$4.00 per minute under the Company's "Premium Value Plan", which has an included message allowance of 600 minutes. Why a "low volume" user would ever consider such a plan goes unexplained by the CPUC.⁶

L.A. Cellular's fear -- expressed in its Initial Comments -- was that the CPUC concluded many months ago that cellular competition was imperfect, and that the

⁶ L.A. Cellular brought this methodological error to the attention of the CPUC, both in writing and orally, on several occasions prior to the filing of the Petition.

CPUC's regulatory controls should continue. The subsequent "investigation" -- conducted without public hearings, or an opportunity even to examine the "evidence" amassed by staff -- was designed simply to ratify a predetermined conclusion.

The Supplemental Filing, so far as it goes, confirms L.A. Cellular's fear. The CPUC has simply accepted, without any true investigation, the allegations of reseller advocates, and has ignored the evidence in its own files. The resulting work product is unlikely to be helpful to this Commission.

III.

RATE REDUCTIONS SINCE SEPTEMBER 15 CONCLUSIVELY DISPROVE THE PRECONCEPTIONS OF THE CPUC

The above, together with the materials contained in L.A. Cellular's Initial Comments of September 19, demonstrate that even at the time of California's Petition, there was little resemblance between the cellular rates alleged by the CPUC, and those actually in force in the Los Angeles market. Events in the four short weeks since the filing of Initial Comments show an acceleration of the downward trend in cellular rates, both in Los Angeles and elsewhere.⁷ This trend is so clear that California's Petition is, at best, an historical curiosity with no relevance to today's market.

A. The Los Angeles Market:

⁷ See Attachment 2 which summarizes Advice Letter filings since September 15, 1994 by facilities-based carriers in the Los Angeles, San Francisco and Sacramento markets.

Note 17 of L.A. Cellular's Initial Comments (at page 19) briefly described the "low end", or "starter" plan introduced by AirTouch Advice Letter 428. The plan was precisely designed for the user group that (according to the CPUC and the resellers) had been ignored by facilities-based carriers. For a monthly payment of \$29.99, the user is entitled to 20 included minutes of conversation time (peak or off-peak), with overcalls being charged at 79 cents (peak) and 26 cents (off-peak). By this single Advice Letter, the monthly charge to users of 30 minutes dropped to \$36.06, as compared to the \$45.00 alleged by the CPUC Petition at page 43.

Shortly after, AirTouch aimed at the other end of the user spectrum by filing its Advice Letters 431 and 431-A, by which a monthly payment of \$440 entitles the end user to up to 1,000 minutes of use, for a resulting per minute charge of 44 cents. L.A. Cellular immediately countered with its own Advice Letter 515, introducing the same effective per minute charge for individual units with usage up to 900 minutes. Lower pre-existing rates for digitally capable units, and multi-unit accounts remain in place.

B. The San Francisco Bay Area:

Los Angeles is the most populous, and most congested cellular market in the country. For this reason, it should not be surprising that Los Angeles rates, though falling, remain higher than elsewhere.

San Francisco-San Jose is the second most populous market in the State. There, rates were somewhat lower as of September 15 than those in Los Angeles.

According to the CPUC Petition, the following "best rates" were available to the customers on the Bay Area Cellular Telephone Company ("BACTC") system:

Figure 3

Bay Area Cellular Telephone Company - Best Rate Per CPUC

Minutes of Use	60	120	480
Best Rate	\$1.03/minute	\$0.77/minute	\$0.45/minute

On September 15, 1994, BACTC introduced its "Digital Flex Plan", which provided new rates for digitally capable individual end user units. These rates include a fixed access charge of \$35.00 (compared to the "basic" access charge of \$45.00), and usage rates which range between 30-42 cents (for peak use) and 16-20 cents (for off-peak use), depending on call volumes. Resulting blended per-minute charges are between 96 cents (for users of only 60 minutes) and 27.8 cents (for the highest volume users). For multi-unit accounts with digital units, per-minute rates are significantly lower. For example, a unit consuming only 60 minutes of conversation time will now pay the equivalent of 76.9 cents per minute, while the consumer of 1,000 minutes will pay 36 cents per minute.

BACTC accompanied the above rate reductions with various promotions, including the following:

- Enrollments between September 15 and October 24 are entitled to a \$50.00 credit for each of the first six months of billings; for the average user, this amounts to a 50% reduction in the already reduced rates described above.

- By Advice Letter 295, BACTC offered new enrollees free incoming calls until December 31, 1995. As previously noted, incoming calls now amount to about 25% of total system usage.
- By Advice Letter 296, BACTC offered another rate reduction (of \$10 per month for the entire service term) whenever a second phone is added to an existing single unit account.

The impact of BACTC filings between September 15 and October 17 is dramatic, especially when the rates that are now effective are compared with those alleged by the CPUC Petition. Thus:

Figure 4

Bay Area Cellular Telephone Company - Best Rates

Minutes of Use	60	120	480
"Best Rate" per CPUC	1.03	.77	.45
Actual Best Rate (as of 10/17/94)	.78	.55	.42

The above rates are for all intents and purposes permanent, and apply with slight variations to both individual and multi-unit accounts. When note is taken of the other credits given on a promotional basis, the effect is even more dramatic. For example, a "typical" dual mode unit, with usage of 120 minutes per month and enrolling in the three-week period described by Advice Letter 294, would be entitled to receive the following rates:

	<u>Single Unit Account</u>	<u>Multi-Unit Account</u>
Access Charge:	\$ 35.00	\$ 26.50
Peak Airtime:	36.48	36.48
Off-Peak Airtime:	4.56	4.08
<u>Less:</u> Credit for Incoming Calls (prior to 12/31)	[8.21]	[8.11]
<u>Less:</u> \$50/mo. credit (for first six months)	[50.00]	[50.00]
TOTAL/Mo.	<u>\$ 13.27 (.11/min.)</u>	<u>\$ 8.95 (.075/min.)</u>

Two comments are especially pertinent. One is the direct relationship between digital conversion activities in Los Angeles and San Francisco and further rate decreases. There is without question a link between capacity and price, with capacity breakthroughs being accompanied by dramatic rate reductions for digitally capable units.

There is also a growing disparity between rate structures that have been put in place by the two Bay Area carriers. GTE Mobilnet has not yet converted to digital service, and did not respond with its own versions of the BACTC post-September 15 filings. Instead GTE has developed its own marketing approach, which emphasizes the ability of subscribers to place calls at "home" rates throughout multiple CGSAs, and to avoid payment of landline toll charges. Whether due to the technical difference between the two carriers, or to the CPUC's belated liberalization of some of its tariff procedures, it is now clear that, contrary to the allegations of the Petition, there is no necessary parallelism between the rate plans of cellular carriers in the same market.

C. The Sacramento Market:

The CPUC Petition concedes that cellular rates in Sacramento have long been substantially lower than in San Francisco or Los Angeles. Indeed, it is somewhat ironic that the CPUC takes credit for lower rates in Sacramento, while blaming allegedly high rates in the other two cities on the carriers.

The fact is that there are different conditions in different cities, and that this -- and nothing more insidious -- explains the rate patterns inaccurately described by the Petition. In the case of Sacramento and other Central Valley markets, a modest

population, and the lack of system congestion has led to lower rates. If anything, this trend has accelerated over the past thirty days. For example, the McCaw system in Sacramento filed its Advice Letter 175 on September 16 introducing a "Premier Plus Plan" providing up to 950 minutes of conversation time for \$199.99, or 21 cents per minute. For the "average" user of 175 minutes/month, the "ceiling rate" is \$69.99, or 40 cents per minute, with the first four months of service being provided for \$11.42 yielding a blended per minute rate of 30 cents over the twelve month life of the contract. Similar rates have been filed by McCaw's competitor, AirTouch, without the four month limitation.

The activities of carriers in all markets over the past thirty days also give the lie to California's contention that the flurry of activity after publication of the Rateband Pricing Guidelines in March, 1993 was shortlived, and that by March, 1994, "only two filings [out of 15] under the Rateband Pricing Guidelines remained in effect." See Petition at page 40. The source of this remark is the unexamined allegation of Cellular Service, Inc., a reseller. The fact is that as of March, 1994, L.A. Cellular alone had sixteen different rate plans which were the subject of continuing reductions submitted under the Rateband Pricing Guidelines.⁸ Based on publicly available tariff filings, L.A. Cellular has determined that fully 51 separate rate plans in San Francisco and Los Angeles alone are currently subject to Rateband Pricing Guideline reductions.

⁸ These rate reductions are the subject of L.A. Cellular's Advice Letter Nos. 375, 430 and 442, filed with the CPUC on June 15, November 12 and December 23, 1993, respectively.

IV.

THE L.A. CELLULAR SYSTEM IS FULLY REDUNDANT AND PERFORMED ADMIRABLY DURING RECENT DISASTERS

The County of Los Angeles ("County") has filed Comments which have only tangential relevance to these proceedings. In essence, the County alleges that cellular systems "were constructed with little regard for their essential public service role." (See the County's Reply Comments filed with the CPUC in Investigation No. 93-12-007 ("Reply Comments"), submitted in this proceeding at page 3. The County follows with a variety of technical grievances. For example:

- The County is concerned over the incompatibility between TDMA and CDMA technologies. (Reply Comments at pp. 12-13).
- The County alleges a lack of redundancy on cellular systems, and states that on one occasion (the "Bunker Hill" fire of March 15, 1994), 911 service was blocked throughout the Los Angeles cellular network. (Reply Comments at p. 2).
- The County complains that all 911 calls from cellular units are routed to the Highway Patrol. (Reply Comments at p. 13).
- The County claims that cellular systems are not built to earthquake standards. (Reply Comments at p. 3).

Under the Omnibus Budget Act (the "Act"), and relevant FCC orders, this proceeding is limited to California's attempt to preserve its jurisdiction over cellular rates. The Act leaves jurisdiction over technical questions unchanged: most of these will continue to be decided at the federal level, while some may be resolved at the

state level. An example of the latter would be the construction standards applicable to cell sites. The fact is that with few exceptions,⁹ L.A. Cellular's sites incorporate earthquake protections, and that these protections are enforced by individual localities. L.A. Cellular does not seek in this or any other proceeding to change this procedure.

Though the County's allegations are beyond the purview of this proceeding, their seriousness requires a response by L.A. Cellular. Thus:

- L.A. Cellular has always been aware of the need for redundancy in its system. Contrary to the County's charge, all L.A. Cellular sites have either battery or generator backup to conventional power sources. The Company's current policy is to install both kinds of backup wherever feasible, with \$25,000,000 having recently been budgeted to provide this form of triple redundancy.
- The current L.A. Cellular design relies on multiple mobile telephone switching offices, each of which is connected with multiple tandem offices on the wired public switched telephone network. Although L.A. Cellular has no direct control over outages in the rest of the PSTN, it does have the means in many cases to bypass crippled parts of the network in order to complete cellular calls.

⁹ The only possible exception to the general rule that new sites are earthquake-resistant is where a cell is located in an older building constructed when code standards were less stringent.

- L.A. Cellular is not aware of any systemwide "crash" of 911 services as the result of the Bunker Hill fire referred to by the County.¹⁰ A total outage in one Pacific central office may affect a group of cell sites controlled through facilities leased from the local exchange carrier. However, remaining cell sites will continue to function, with emergency and other calls being completed in the ordinary course.
- It is true that 911 calls are routed (free of charge) to the California Highway Patrol. This is the result of recent legislation which received the support of all relevant groups. California Public Utilities Code §2892. Ordinarily, 911 calls are routed to emergency service agencies that are located near the landline central office where the calling number resides. Such a routing procedure would be totally inappropriate for cellular units, which, by definition, may be hundreds of miles away.¹¹

The County cautions this Commission against reliance on "anecdotal evidence". L.A. Cellular could not agree more. In this regard, Attachment 3 to these Reply Comments describes, with precise statistics, L.A. Cellular's reaction to the crises which followed the Northridge earthquake in early 1994. Attachment 3 describes

¹⁰ The County (at page 2 of its Reply Comments) implies that the results of the Bunker Hill fire were the responsibility of cellular carriers. The fire occurred in a non-cellular, landline facility. There was no lack of redundancy on the cellular network.

¹¹ This Commission has recently announced a Notice of Proposed Rulemaking regarding 911 services and wireless carriers. See GEN Docket 94-102, News Release ("FCC Takes Action to Ensure Accessibility to 911 Services" (September 19, 1994).)

dramatic increases in system usage, and equally dramatic efforts to accommodate such usage. The fact is that cellular service has become a valuable tool in emergency situations. The County's reliance on "anecdotal evidence" to the contrary can only be deplored.

V.

CONCLUSION

On Friday, October 14, 1994 the CPUC issued its Decision 94-10-040. The Decision illustrates well the themes which have marked the CPUC's approach to cellular rate regulation over the past ten years.

L.A. Cellular's Initial Comments herein described the CPUC's decision, in 1983, to apply traditional tariff filing requirements and other restrictions on facilities-based cellular carriers. The Comments showed how periodic efforts at liberalization have tended to be defeated by cellular resellers, who have at all times argued against giving downward pricing flexibility to cellular carriers. Whether the issue relates to roaming rates, or "temporary" tariffs, or new offerings, or promotional credits, or customer-specific contracts, the reaction of the resellers, sometimes joined by Nextel, has been negative. In their view, no cellular rate should change, or new offering be introduced without advance notice to competitors, an extended protest period, and, in many cases, time-consuming hearings.

L.A. Cellular's Initial Comments also touched on the most recent attempts by the CPUC to liberalize its regime. Decision 94-04-043, among other things, abolished

the rule which limited promotional credits to \$100, and made it possible for carriers to introduce new, optional rate plans on a single day's notice.

The resellers sought rehearing of 94-04-043, and by Decision 94-10-040, the CPUC has granted their wish. Hearings must now be held into unspecified "antitrust" objections to the Commission's relaxation of the limit on promotional credits. What is more, Decision 94-10-040 has stayed that part of Decision 94-04-043 which permits new offerings to be introduced without advance notice to competitors. Henceforth, and until the conclusion of public hearings and publication of a final decision (which could be many months away), no new cellular service offering, or rate plan may be introduced in California except on thirty days' advance notice to the world. If protests are filed, delays can be longer.

Unfortunately, Decision 94-10-040 may mark a return by the CPUC to the psychology of the late-1980's and early 1990's where cellular price competition was repeatedly dampened by CPUC rules designed more to protect competitors than to further competition. The negative impact of the latest CPUC decision will be immediately apparent, since many of the most aggressive rate reductions described in the Initial Comments and in these Reply Comments have been filed as new rate plans, and have taken effect on a single day's notice. None of these new plans has been mandatory, and none has threatened reseller margins, which have continued to be guaranteed by the CPUC. Yet all of these plans will now have to be pre-announced, and subjected to a regulatory gauntlet before their benefits may be extended to end users.

This is the heart of the matter now faced by this Commission, which must decide whether Don Quixote should again be authorized to sally forth, on decrepit

steed and with broken lance, to do battle with market forces which have already proven to be far more efficient than the CPUC at achieving acknowledged public goals.

L.A. Cellular would respectfully suggest that the better course is to recognize that the CPUC's view is dated, and out of focus, and to deny California's Petition.

Respectfully submitted,

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